

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAC COURTE OREILLES BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS, et al.,

Plaintiffs,

v.

STATE OF WISCONSIN, et al.,

Defendants.

Case No. 74-C-313-C

STIPULATION ON ENFORCEMENT

The purpose of this stipulation is to narrow the self-regulatory issues presented in the October 11, 1988, subphase of this litigation. This stipulation deals with enforcement and tribal court issues only and does not constitute an agreement by the parties concerning the adequacy of other sections of the plaintiffs' Off-Reservation Conservation Code not explicitly set forth herein.

In consideration of the pending enforcement and tribal court issues, the parties stipulate and agree as follows:

1. The United States District Court for the Western District of Wisconsin may incorporate the terms and provisions of this stipulation in the order resulting from the trial of the regulatory issues regarding the tribal harvest of walleye and muskellunge scheduled to begin on October 11, 1988. The requirements of this stipulation shall become effective immediately upon entry of said order for those tribes with conservation codes conforming to the court's order and this

stipulation. For those tribes enacting conforming codes after entry of this court's order, the requirements of this stipulation shall become effective thirty (30) days after notice to defendants of such enactment.

2. The plaintiff tribes shall authorize the State of Wisconsin, Department of Natural Resources, enforcement personnel, to enforce the provisions of each plaintiff's Off-Reservation Conservation Code.

3. The plaintiffs' Off-Reservation Conservation Codes shall include enforcement and related provisions substantively identical in scope and content to secs. 3.02, 3.08, 3.09, 3.10, 3.11, 3.12, 3.13, 3.25, 3.26, 9.04, 9.10, 9.11(1), 9.14, 9.15, 9.18, 9.20, 9.21 and ch. 4 of the model Off-Reservation Conservation Code (June 14, 1988), copies of which are attached hereto as Exhibit A.

4. The defendants State of Wisconsin, Wisconsin Natural Resources Board, Carroll D. Besadny, James T. Addis, and George E. Meyer, are hereby enjoined from prosecuting in state court any violation of state or tribal regulations governing the acts of harvesting walleye or muskellunge against a member of a tribe maintaining a court and code of regulations as described in this stipulation, except as state prosecution may be permitted in this stipulation. Nothing in this stipulation precludes the state from prosecuting in state court criminal code violations in chs. 940, et seq., Stats. or §§ 29.64 or 29.641. By not including § 29.645, Stats. in this listing it is not the intent of the parties to preclude state criminal prosecution for larceny

of same if the facts warrant it. Furthermore, the application of ch. 30, Stats., to tribal harvest activities is not covered by this stipulation and subject to further negotiation of the parties. Nothing in this stipulation precludes the State from asserting the right to enforce the powers under secs. 29.135(5), (6) and (7), Stats., against any tribal wholesale fish dealer, wherever located, who purchases fish from non-Indian sources.

5. This stipulation and subsequent injunction shall remain in full force and effect as to all parties to this action, their successors in office, their agents, employees and representatives, and any and all persons claiming an interest through said parties, until or unless any party shall prove, to the satisfaction of this court, that enforcement or adjudication by a plaintiff tribe of the provisions of its Off-Reservation Conservation Code is not fair, uniform and diligent or that a tribal court is not operating according to the provisions set forth in Exhibit B attached hereto.

6. The law enforcement personnel of the plaintiffs are trained for and competent to provide effective enforcement of a code such as plaintiffs' Model Off-Reservation Conservation Code (June 14, 1988). On the date of this stipulation, however, they are not able to provide for exclusive enforcement of such codes throughout the ceded territory to the preemption of enforcement activities by the law enforcement officers of the State of Wisconsin.

7. Each plaintiff has competent and responsible leadership, which is able to promulgate and apply tribal

off-reservation harvesting regulations, through the enactment of relevant tribal ordinances.

8. Each plaintiff has issued and does require color photograph identification cards for those members who harvest natural resources off-reservation pursuant to tribal authorization.

9. Each plaintiff has established a tribal court, with jurisdiction to adjudicate alleged violations by a tribal member of his/her tribes' off-reservation harvesting regulations. Each court is organized according to the provisions of attached Exhibit B.

10. Each of the plaintiffs' tribal courts is capable of adjudicating alleged violations of a code such as the Model Off-Reservation Conservation Code (June 14, 1988), in a fair, uniform and diligent manner, and such adjudicatory capability is adequate to ensure effective enforcement of the provisions of said code.

11. All records of tribal courts involving the exercise of usufructuary rights (except those isolated records protected by law such as juvenile records) shall be open for inspection and copying by the Department of Natural Resources at reasonable times upon reasonable notice. The actual proceedings in said courts shall also be open to the Department of Natural Resources.

12. It is the express intention of all parties that their respective enforcement officers work cooperatively in enforcing Off-Reservation Conservation Codes. The Wisconsin Department of Natural Resources agrees to make good faith efforts to coordinate

with tribal wardens in its enforcement activities. Specifically, the Wisconsin Department of Natural Resources agrees to involve, as practicable, tribal wardens in contacts with tribal members concerning compliance with Off-Reservation Conservation Codes. The tribes agree to make good faith efforts to coordinate with Department of Natural Resources wardens in their enforcement activities. To facilitate the cooperative intent of this paragraph, the chief wardens of said parties shall meet semi-annually to discuss matters of mutual concern.

13. The tribes and Great Lakes Indian Fish and Wildlife Commission enforcement and biological staffs shall share harvest, registration and similar data with the Wisconsin Department of Natural Resources enforcement personnel in a timely and professional manner. Specifically:

(a) Harvest reports and data referred to in sec. 3.02(6) of the Model Off-Reservation Conservation Code (June 14, 1988) are accessible to tribal, state, local or federal law enforcement officers upon request by such officer pursuant to sec. 3.02(5).

(b) Section 4.07 of the Model Off-Reservation Conservation Code (June 14, 1988) is not intended nor does it in fact, restrict access to the information set forth therein to only tribal and commission wardens. To be consistent with section 11(a) of the Chippewa Intertribal Agreement Governing Resource Management Regulation of Off-Reservation Treaty Rights in the Ceded Territory, the information covered in sec. 4.07 shall also be shared with

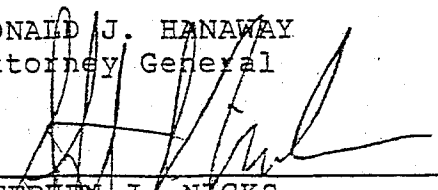
the Wisconsin Department of Natural Resources enforcement personnel.

(c) The sequentially numbered tags referred to in secs. 3.10 and 9.21 of the Model Off-Reservation Conservation Code (June 14, 1988) or any other identification system under 3.10, shall be indexed by number and the information as to which tribal member a tag has been issued shall be promptly accessible to the Department of Natural Resources upon request. An example of the format of the tribal record is attached as Exhibit C.

(d) Section 3.26 of the Model Off-Reservation Conservation Code (June 14, 1988) requires a written record of all commercial transactions be kept by the seller. A contemporaneous bill of sale for each transaction or a log sheet kept current by posting each transaction within twenty-four hours of occurrence constitute the minimum levels of compliance. An acceptable sample of the bill of sale and log is attached as Exhibit D. Records kept during any month and not yet due to be forwarded to the tribal conservation department shall be open to inspection under the same conditions as set forth in sec. 4.05(2) of the Model Off-Reservation Conservation Code (June 14, 1988).

DONALD J. HANAWAY
Attorney General

Dated: Oct 11, 1988


STEPHEN J. NICKS
Assistant Attorney General
Attorneys for Defendants